IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 332 OF 2003

State of Maharashtra .. Applicant

versus

Prem Sing Mota S. Bawa & Anr. .. Respondents

...

Mr.B.R.Patil, APP for the State.

Respondent present in person.

CORAM : V.M. KANADE, J

DATED : 16th September 2004.

P.C:-

1. Heard the learned APP appearing on behalf of the State.

2. The State is challenging judgement and order passed by the Special Judge, Bombay in Independent Case no.9 of 1990 whereby order dated 19th August 2002, the respondent nos.1 and 2 were acquitted of the charge which was charged u/s. 5(2) r/w sec.5(1)(e) of Prevention of Corruption Act 1947 r/w Section 13(2) r/w sec.13(1)(a) and sec.168 r/w sec.34

of the IPC r/s sec.5 of the Money Lenders Act 1947.

3. The case of the prosecution is that an amount of Rs.2 lakhs was found disproportionate and therefore, the respondent was charged under the said sections. The trial Court after perusing the evidence on record and considering the explanation given by the respondent has come to the conclusion that the said charge is not proved. In paragraph no.46 of the judgement, the trial Court has observed that the income of the accused from other sources after final calculation was Rs.7,46,810/-. His expenditure during the said period was Rs.5,29,421/-. Therefore, according to the prosecution, the savings would have been Rs.2,16,801/-. It was alleged that the accused was holding assets worth Rs.3,05,346/- and therefore, assets to the extent of Rs.87,857/- were disproportionate to the known sources of his income.

4. The trial Court after taking into consideration the judgement of the Apex Court reported in 1977 SCC pg 816 came to the conclusion that the disproportionate assets were covered by the margin allowed and therefore, the benefit ought to be given to the accused. The trial Court has further observed that though the prosecution had not discharged the

initial burden of showing that the assets were disproportionate to the known sources of income. The trial Court also considered the explanation of the respondents and accepted the said explanation. So far as other charge is concerned regarding accused and his family members carrying on money lending business is concerned, the trial Court observed that no evidence was adduced by the prosecution to prove that the accused was continuously carrying on the said business. As the defined under sub-section (2) of section 2 of the said Act. In my view, I have already perused the record and the evidence of the witnesses examined by the prosecution. In my view, the finding given by the trial Court is not unreasonable or perverse. The respondent no.1 has already retired from services and as a result of the pending Criminal Appeal, his pension is withheld. The investigation in the said case was initially sanctioned in the year 1986. More than 18 hears have passed.

5. Under these circumstances, this is not a fit case where leave should be granted.

6. Leave is therefore, refused. Appeal is dismissed.

V.M. KANADE, J